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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,035	05/02/2007	Gregor Esser	100341.57627US	9124

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EXAMINER
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STULTZ, JESSICA T

ART UNIT	PAPER NUMBER
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2873

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,035	<b>Applicant(s)</b> ESSER ET AL.	
	<b>Examiner</b> JESSICA T. STULTZ	<b>Art Unit</b> 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/24/06; 11/15/06</u> .                                      | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

Figures 1 and 3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.

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- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 5 (and therefore dependent claims 2-4 and 6-7) are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 5 recites the limitation "the main progressive length" in the claim. There is insufficient antecedent basis for this limitation in the claim. Specifically, there is no previous mention of what is defined as the "main progressive length". For purposes of examination it is assumed that the phrase read, "a main progressive length defined as the quotient of the addition and the maximum slope of the refractive index along the main line, wherein the main progressive length has a maximum value of 10 mm".

Claims 1 and 5 recites the limitation "the progressive length" in the claim. There is insufficient antecedent basis for this limitation in the claim. Specifically, the definition of a progressive length was not previously mentioned in the claim. For purposes of examination it is assumed that the phrase "the progressive length...millimeters" is placed at the end of the claim, specifically "and a progressive length corresponds...to the near value, wherein the progressive length...millimeters."

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Claims 2-4 and 6-7 are rejected since they inherit the indefiniteness of the claims from which they depend.

### ***Claim Objections***

Claims 1-2 and 5 are objected to because of the following informalities: in claims 1 and 5, the phrase “amounts to max 18 millimeters” should be “amounts to a maximum value of 18 millimeters”; the phrases “length is max.” should be “has a maximum value of”; “the increase in refractive index” should be “an increase in refractive index”; in claim 2, “the astigmatism on the main line” should be “astigmatism on the main line”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ahsbahs et al US 6,595,637, herein referred to as Ahsbahs '637.

Regarding claim 1, Ahsbahs '637 discloses an individual eyeglass lens (Abstract), comprising: an area designed for seeing at greater distances, in particular into the infinite, hereinafter referred to as the far part (Column 6, lines 30-63, wherein the lens comprises a far vision correction region, Figures 1-6), an area designed for seeing at shorter distances and especially reading distances, hereinafter referred to as the near part (Column 6, lines 30-63, wherein the lens comprises a near vision correction region, Figures 1-6), and a progressive zone arranged between the far part and the near part where the effect of the eyeglass lens increases

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from the value at the far reference point located in the far part, hereinafter referred to as the far value, to the value at the near reference point located in the near part, hereinafter referred to as the near value, along a curve running toward the nose, hereinafter referred to as the main line (Column 6, lines 30-63, wherein the lens comprises a progressive vision correction region between a far control point and a near control point, Figures 1-6), whereby the vertical distance from the near reference point to the far distance point amounts to max. 18 millimeters (Column 6, lines 44-63, Figures 1-6), and the increase in refractive index, starting from the effect of the eyeglass lens at the far reference point up to a point 2 millimeters below the centering point amounts to less than 10% of the addition (Shown in Figures 1-6), and the progressive length corresponds essentially to the vertical distance between the far reference point and a point essentially on the main line at which, starting from the far reference point, the value of the effect of the eyeglass lens corresponds the first time essentially to the near value, wherein the progressive length has a maximum value of 14 millimeters (Column 6, lines 44-63, see Figures 1-6) and it is inherent that a main progressive length defined as the quotient of the addition and the maximum slope of the refractive index along the main line, wherein the main progressive length has a maximum value of 10 mm, this being reasonably based upon the mean sphere maps of Figures 1 and 5, wherein the mean sphere is directly related to the refractive index (Column 1, lines 17-25) and wherein the value of L, representative of the length of the lens over which the mean sphere goes from the minimum value to a maximum value, is 7.64 mm (Column 6, lines 62-65).

Regarding claim 5, Ahsbahs '637 discloses the use of an individual eyeglass lens for correcting a user's optical vision defect (Abstract), comprising: an area designed for seeing at

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greater distances, in particular into the infinite, hereinafter referred to as the far part (Column 6, lines 30-63, wherein the lens comprises a far vision correction region, Figures 1-6), an area designed for seeing at shorter distances and especially reading distances, hereinafter referred to as the near part (Column 6, lines 30-63, wherein the lens comprises a near vision correction region, Figures 1-6), and a progressive zone arranged between the far part and the near part where the effect of the eyeglass lens increases from the value at the far reference point located in the far part, hereinafter referred to as the far value, to the value at the near reference point located in the near part, hereinafter referred to as the near value, along a curve running toward the nose, hereinafter referred to as the main line (Column 6, lines 30-63, wherein the lens comprises a progressive vision correction region between a far control point and a near control point, Figures 1-6), whereby the vertical distance from the near reference point to the far distance point amounts to max. 18 millimeters (Column 6, lines 44-63, Figures 1-6), and the increase in refractive index, starting from the effect of the eyeglass lens at the far reference point up to a point 2 millimeters below the centering point amounts to less than 10% of the addition (Shown in Figures 1-6), and the progressive length corresponds essentially to the vertical distance between the far reference point and a point essentially on the main line at which, starting from the far reference point, the value of the effect of the eyeglass lens corresponds the first time essentially to the near value, wherein the progressive length has a maximum value of 14 millimeters (Column 6, lines 44-63, see Figures 1-6) and it is inherent that a main progressive length defined as the quotient of the addition and the maximum slope of the refractive index along the main line has a maximum value of 10 mm, this being reasonably based upon the mean sphere maps of Figures 1 and 5, wherein the mean sphere is directly related to the refractive index (Column 1,

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lines 17-25) and wherein the value of L, representative of the length of the lens over which the mean sphere goes from the minimum value to a maximum value, is 7.64 mm (Column 6, lines 62-65).

Regarding claims 4 and 7, Ahsbahs '637 further discloses that the surface having the increase in effect is the surface facing the eye (Column 10, lines 16-18).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahsbahs '637, as applied to independent claims 1 and 5 above, in view of Haimerl US 2003/0117578, herein referred to as Haimerl '578.

Regarding claim 2, Ahsbahs '637 discloses that eyeglass lens as shown above, but does not specifically disclose that the location of a minimal astigmatism is not on the main line but instead in the periphery, either nasally or temporally, astigmatism on the main line amounts to more than 0.5 diopter and the astigmatism is distributed completely asymmetrically with regard to the main line. In the same field of endeavor of multifocal spectacle lenses (Abstract), Haimerl '578 teaches of an eyeglass lens wherein the location of the minimal astigmatism is not on the main line but instead in the periphery, either nasally or temporally, astigmatism on the main line amounts to more than 0.5 diopter and the astigmatism is distributed completely asymmetrically with regard to the main line (Paragraph 104, shown in Figure 10d). Therefore it would have been



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obvious to one having ordinary skill in the art at the time the invention was made for the eyeglass lens of Ahsbahs '637 to comprise the astigmatism characteristics as taught by Haimerl '578 for the purpose of providing the astigmatism properties of a spectacle lens in a wearing position for a particular spectacle wearer (Paragraphs 56 and 68).

Regarding claims 3 and 6, Ahsbahs '637 and Haimerl '578 disclose and teach of the eyeglass lens as shown above, and Ahsbahs '637 further discloses that the progressive length is at most 12 millimeters (Column 6, lines 44-63, see Figures 1-6), the increase in refractive index 3 millimeters below the centering point amounts to less than 10% of the addition, the addition being achieved 2 millimeters above the near reference point and then the refractive index is stable, i.e., almost constant at least over a length of 4 millimeters (Shown in Figures 1-6), and it is inherent that a main progressive length defined as the quotient of the addition and the maximum slope of the refractive index along the main line, wherein the main progressive length is at most 8 mm, this being reasonably based upon the mean sphere maps of Figures 1 and 5, wherein the mean sphere is directly related to the refractive index (Column 1, lines 17-25) and wherein the value of L, representative of the length of the lens over which the mean sphere goes from the minimum value to a maximum value, is 7.64 mm (Column 6, lines 62-65), and Haimerl '578 further teaches that the surface astigmatism amounts to more than 0.5 diopter at all points along the main line (Paragraph 104, shown in Figure 10d). Ahsbahs '637 also further discloses that the vertical distance from the near reference point to the far reference point is 16 millimeters, just outside the claimed upper limit of 14 millimeters. However, it has been held that where the claimed ranges and prior art do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, a prima facie case of obviousness

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exists. Titanium Metals Corporation of America, 227 USPQ 773 (Fed Cir. 1985). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made for the vertical distance from the near reference point to the far reference point to be at most 14 millimeters for the purpose of providing a short progressive corridor for lenses used in small lens frames.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Guilino US 4,315,673, Pedrono US 5,272,495, Umeda US 5,805,265, Francois US 6,220,705, Girod US 6,382,790, and Morris US 6,652,096 are cited since they disclose multifocal lenses with short progressive lengths.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA T. STULTZ whose telephone number is (571)272-2339. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jessica T Stultz  
Primary Examiner  
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